

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Before the court is defendant Evolution Construction, LLC’s (“Evolution”) motion to dismiss for lack of subject matter jurisdiction. Doc. #54.¹ Plaintiff Neil M. Johnson (“Johnson”) filed an opposition (Doc. #56) to which Evolution replied (Doc. #57).

Also before the court are Johnson's various pending motions including: (1) motion for writ of attachment (Doc. #49); (2) motion for pre-trial conference (Doc. #59); (3) motion for scheduling order (Doc. #60); (4) motion for summary judgment (Doc. #61); (5) motion for default judgment (Doc. #64); (6) motion for default judgment (Doc. #68); (7) motion for leave to file an amended complaint (Doc. #70); and (8) motion for leave to proceed in forma pauperis for service of process of amended complaint (Doc. #72).

Finally before the court is defendant Evolutions' motion to extend time. Doc. #62.

¹ Refers to the court's docket number.

1 **I. Facts and Procedural History**

2 Johnson purchased real property that was developed and sold by defendant Comfort. On
3 February 25, 2010, Johnson filed a construction defect action against defendants in federal court
4 alleging six causes of action: (1) breach of contract; (2) breach of duty of good faith and fair
5 dealing; (3) breach of express warranties; (4) breach of implied warranty of merchantability; (5)
6 negligence; and (6) negligent misrepresentation. Doc. #5.

7 Subsequently, on June 3, 2010, defendant Comfort filed a motion to dismiss for lack of
8 subject matter jurisdiction (Doc. #36) which was granted by the court (Doc. #42). In its order, the
9 court noted that Johnson's complaint failed to allege any federal causes of action and that there was
10 not complete diversity between the parties. *See* Doc. #42. Johnson appealed (Doc. #44) and the
11 Ninth Circuit affirmed the court's dismissal of Johnson's complaint for lack of subject matter
12 jurisdiction in its entirety (Doc. #73).

13 **II. Discussion**

14 In the court's July 20, 2010 order granting defendants' motion to dismiss for lack of subject
15 matter jurisdiction, the court held that it could not exercise federal question jurisdiction in this
16 action because there were no federal causes of action plead in Johnson's complaint. *See* Doc. #42.
17 Furthermore, the court held that it could not exercise diversity jurisdiction in this action under
18 28 U.S.C. § 1332(a)(1) because Johnson's complaint alleged that he, along with various
19 defendants, were all citizens of the state of Nevada. *Id.* The Ninth Circuit affirmed the court's order
20 and subsequent dismissal of Johnson's complaint for lack of subject matter jurisdiction. Doc. #73.
21 Accordingly, the court is without subject matter jurisdiction to hear the pending motions and shall
22 deny Johnson's various motions.

23 Additionally, as to Johnson's motion for leave to file an amended complaint (Doc. #70) and
24 the subsequently filed amended complaint (Doc. #71), the court notes that although Johnson has
25 raised several federal causes of action in the amended complaint that would raise federal question

1 jurisdiction, Johnson has filed the same complaint in a new civil action, *Johnson v. Comfort Inn*,
2 3:10-cv-0731-LRH-RAM. Accordingly, the court shall deny Johnson's motion to amend and strike
3 the amended complaint as duplicative.

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5 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #54) is
6 GRANTED.

7 IT IS FURTHER ORDERED that defendant's motion to extend time (Doc. #62) is
8 DENIED as moot.

9 IT IS FURTHER ORDERED that plaintiff's motion for writ of attachment (Doc. #49),
10 motion for pretrial conference (Doc. #59), motion for scheduling order (Doc. #60), motion for
11 summary judgment (Doc. #61), motion for default judgment (Doc. #64), motion for default
12 judgment (Doc. #68), and motion to proceed in forma pauperis (Doc. #72) are DENIED.

13 IT IS FURTHER ORDERED that plaintiff's motion for leave to file amended complaint
14 (Doc. #70) is DENIED. The clerk of court shall STRIKE plaintiff's amended complaint (Doc.
15 #71).

16 IT IS SO ORDERED.

17 DATED this 14th day of December, 2010.



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20 LARRY R. HICKS
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22 UNITED STATES DISTRICT JUDGE
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